

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

LUCIUS LARKE III

(b) County of Residence of First Listed Plaintiff Philadelphia
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Mary Kramer; Murphy Law Group, LLC; 1628 John F.
Kennedy Blvd., Ste. 2000, Philadelphia, PA, 19103;
267-273-1054

DEFENDANTS

TASTY BAKING COMPANY

County of Residence of First Listed Defendant Philadelphia
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input checked="" type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. § 2601, et seq.

Brief description of cause:
FMLA interference and retaliation

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

Dec 22, 2022

SIGNATURE OF ATTORNEY OF RECORD

/s/ Mary Kramer

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 4642 D Street, Philadelphia, PA 19120
Address of Defendant: 4300 S 26th Street, Philadelphia, PA 19112
Place of Accident, Incident or Transaction: 4300 S 26th Street, Philadelphia, PA 19112

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- | | | |
|--|------------------------------|--|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 12/22/2022

Mary Kramer

Digitally signed by Mary Kramer
DN: CN = Mary Kramer email =
mkramer@phillyemploymentlawyer.com C = US O =
Murphy Law Group, LLC
Date: 2022.12.22 10:53:35 -05'00'

Attorney-at-Law / Pro Se Plaintiff

324078

Attorney I.D. # (if applicable)

CIVIL: (Place a ✓ in one category only)

A. Federal Question Cases:

- | | |
|-------------------------------------|---|
| <input type="checkbox"/> | 1. Indemnity Contract, Marine Contract, and All Other Contracts |
| <input type="checkbox"/> | 2. FELA |
| <input type="checkbox"/> | 3. Jones Act-Personal Injury |
| <input type="checkbox"/> | 4. Antitrust |
| <input type="checkbox"/> | 5. Patent |
| <input type="checkbox"/> | 6. Labor-Management Relations |
| <input type="checkbox"/> | 7. Civil Rights |
| <input type="checkbox"/> | 8. Habeas Corpus |
| <input type="checkbox"/> | 9. Securities Act(s) Cases |
| <input type="checkbox"/> | 10. Social Security Review Cases |
| <input checked="" type="checkbox"/> | 11. All other Federal Question Cases |

(Please specify): Family and Medical Leave Act

B. Diversity Jurisdiction Cases:

- | | |
|--------------------------|--|
| <input type="checkbox"/> | 1. Insurance Contract and Other Contracts |
| <input type="checkbox"/> | 2. Airplane Personal Injury |
| <input type="checkbox"/> | 3. Assault, Defamation |
| <input type="checkbox"/> | 4. Marine Personal Injury |
| <input type="checkbox"/> | 5. Motor Vehicle Personal Injury |
| <input type="checkbox"/> | 6. Other Personal Injury (Please specify): _____ |
| <input type="checkbox"/> | 7. Products Liability |
| <input type="checkbox"/> | 8. Products Liability – Asbestos |
| <input type="checkbox"/> | 9. All other Diversity Cases |

(Please specify): _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Mary Kramer, counsel of record or pro se plaintiff, do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:

☐ Relief other than monetary damages is sought.

DATE: 12/22/2022

Mary Kramer

Digitally signed by Mary Kramer
DN: CN = Mary Kramer email =
mkramer@phillyemploymentlawyer.com C = US O = Murphy Law
Group, LLC
Date: 2022.12.22 10:54:48 -05'00'

Attorney-at-Law / Pro Se Plaintiff

324078

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LUCIUS LARKE III
4642 D Street
Philadelphia, PA 19120

Plaintiff,

v.

TASTY BAKING COMPANY
4300 S 26th Street
Philadelphia, PA 19112

Defendant.

CIVIL ACTION NO.: _____

JURY TRIAL DEMANDED

COMPLAINT – CIVIL ACTION

Plaintiff, Lucius Larke III (“Plaintiff”), by and through his undersigned attorney, for his Complaint against Tasty Baking Company (“Defendant”), alleges as follows:

INTRODUCTION

1. Plaintiff brings this Complaint contending that Defendant interfered with the exercise of his rights under the Family and Medical Leave Act (“FMLA”), 29 U.S.C. § 2601, *et seq.* and retaliated against Plaintiff for attempting to exercise his rights under the same.

PARTIES

2. Plaintiff is a citizen of the United States and the Commonwealth of Pennsylvania, and currently maintains a residence at 4642 D Street, Philadelphia, PA 19120.

3. Upon information and belief, Defendant is a for-profit corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with a principal place of business at 4300 S 26th Street, Philadelphia, PA 19112.

JURISDICTION AND VENUE.

4. Paragraphs 1 through 3 are hereby incorporated by reference as though the same were fully set forth at length herein.

5. This is an action authorized pursuant to the Family and Medical Leave Act, 29 U.S.C. § 2601, *et seq.*

6. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1343, as it is a civil action arising under the laws of the United States.

7. The venue in this district is proper to 28 U.S.C. § 1391, inasmuch as Defendant resides in this district and the events giving rise to this action occurred in this district

FACTUAL BACKGROUND

8. Paragraphs 1 through 7 are hereby incorporated by reference, as though the same were fully set forth length herein.

9. Upon information and belief, Defendant has employed approximately five hundred (500) employees within a seventy-five (75) mile radius of Plaintiff's worksite in Philadelphia, PA during at least twenty (20) workweeks in 2022, 2021, and 2020.

10. On or around July 12, 2012, Defendant hired Plaintiff into the position of machine operator/mixer operator.

11. Throughout the course of his employment with Defendant, Plaintiff performed his job well, receiving occasional praise for his work, positive feedback concerning his employment, and no discipline.

12. On or around October 7, 2021, Plaintiff's son was born.

13. Plaintiff's son was born premature and required ongoing medical attention after his birth.

14. After Plaintiff's son was born, and knowing that his son would need extra care due to being born premature, Plaintiff spoke with Hayley Angeline ("Ms. Angeline"), Defendant's Assistant Director of Human Resources, about taking leave under the Family Medical Leave Act.

15. Ms. Angeline directed Plaintiff to speak with Defendant's third-party leave provider, ReedGroup, so that Plaintiff could request FMLA leave.

16. On or around October 8, 2021, Plaintiff submitted a request for continuous leave from October 7, 2021 through October 15, 2021 for care of his newborn son.

17. Plaintiff's continuous leave request for the care of his newborn son for the period of October 7, 2021 through October 15, 2021 was approved on or around October 15, 2021; Plaintiff was expected to return to work on October 17, 2021, at which time he had 432 hours of FMLA leave remaining.

18. Plaintiff subsequently requested intermittent leave under the FMLA for the period of October 27, 2021 through April 27, 2022; Plaintiff was notified that ReedGroup had received his request on or around October 28, 2021.

19. On or around November 4, 2021, Plaintiff was notified that his intermittent leave request for the period of October 27, 2021 through April 27, 2022 had been approved.

20. As of November 4, 2021, Plaintiff had 432 hours, or 10.8 weeks, of FMLA leave remaining.

21. On or around February 23, 2022, Plaintiff was presented with an Unsatisfactory Attendance Form, which included the disciplinary action of "final written warning."

22. According to the final written warning, if Plaintiff were to "incur another attendance infraction, regardless of type or reason" he would be issued the "correct level of discipline to correspond with [his] current attendance points up to and including dismissal."

23. Upon information and belief, Plaintiff was given attendance points on at least five (5) separate occasions, between November 7, 2021 and April 1, 2022, when he attempted to use his intermittent FMLA time for the care of his son but that time was denied.

24. Specifically, Plaintiff was denied the use of his intermittent FMLA time on the following dates:

- November 7, 2021 – 8 hours;
- December 8, 2021 – 8 hours;
- February 25, 2022 – 8 hours;
- March 15, 2022 – 3 hours; and
- April 1, 2022 – 8 hours.

25. On or around April 22, 2022, Plaintiff submitted a request for an extension of his intermittent FMLA leave through October 26, 2022.

26. At the time Plaintiff submitted his request for an extension of his intermittent FMLA leave, he still had 377.5 hours, or 9.44 weeks, of leave time remaining.

27. Plaintiff's request for an extension of his intermittent FMLA leave was immediately granted and as of April 22, 2022, Plaintiff's intermittent FMLA period had been extended through October 26, 2022.

28. On or around May 8, 2022, shortly after Plaintiff's FMLA leave was extended, Defendant notified Plaintiff that he was being placed on an unpaid suspension pending an investigation into Plaintiff calling out from work on April 25, 2022 and April 26, 2022 to take care of his son.

29. Plaintiff was not given any details about the investigation into his April 26, 2022 absence.

30. In or around June 2022, Plaintiff was terminated for violating Defendant's attendance policy after allegedly accumulating attendance points (10) that exceeded the threshold for termination (9).

31. As mentioned above, at least five (5) of Plaintiff's attendance points were given for absences that should have been excused as approved time off and covered under his intermittent FMLA time.

32. At the time of his termination, Plaintiff still had over 300 hours of FMLA leave available.

33. It is believed and therefore averred that Defendant terminated Plaintiff's employment because Plaintiff attempted to exercise his rights under the FMLA to take leave in order to care for his son's serious health condition, and because Defendant was concerned that Plaintiff would continue to utilize his intermittent FMLA leave in the future.

34. As a result of Defendant's actions, Plaintiff was prevented from exercising his right to up to twelve (12) weeks of protected leave under the FMLA and denied reinstatement following his return from family leave.

35. It is believed and therefore averred that Defendant terminated Plaintiff's employment in retaliation for attempting to exercise his rights under the FMLA.

36. As a result of Defendant's deliberate, willful, malicious, and unlawful actions, Plaintiff has suffered damages, including, but not limited to, loss of employment, promotion benefits, earnings and earnings potential, health and/or retirement benefits, loss of potential benefits, and other economic damages.

COUNT I
VIOLATION OF THE FAMILY AND MEDICAL LEAVE ACT
29 U.S.C. 2601, et seq.
INTERFERENCE AND RETALIATION

37. Paragraphs 1 through 36 are hereby incorporated by reference as though the same were fully set forth at length herein.

38. Defendant is a “covered employer” under the FMLA and employed at least fifty (50) employees within a seventy-five (75) mile radius of Plaintiff’s worksite for each working day in each of (20) or more calendar weeks in 2022, 2021, and 2020.

39. Plaintiff was an eligible employee under the FMLA and was entitled to take up to twelve (12) weeks of unpaid leave in order to care for his son’s serious health condition.

40. Plaintiff provided adequate notice to Defendant of his need for a medical leave to care for his son’s serious health condition by giving notice as soon as he became aware of the need and as soon as was practicable.

41. Defendant violated the FMLA by terminating Plaintiff for taking FMLA-qualifying leave and/or in retaliation for exercising his rights under the FMLA.

42. The aforementioned actions of Defendant constitute both interference and retaliation violations of the FMLA.

43. As a result of Defendant’s actions, Plaintiff has suffered significant damages.

WHEREFORE, as a result of the unlawful conduct of the Defendant, Plaintiff respectfully requests that this Court enter a judgment in his favor and against Defendant, and grant him the maximum relief allowed by the law, including, but not limited to:

1) Back wages, front pay, and bonuses in an amount to be determined at trial, but not less than one hundred and fifty thousand dollars (\$150,000.00);

- 2) Monetary compensation for the amounts expended by Plaintiff on health insurance premiums;
- 3) Liquidated damages;
- 4) Plaintiff's costs, disbursements, and reasonable attorneys' fees incurred in prosecuting this action;
- 5) Pre-judgment interest in an appropriate amount; and
- 6) Such other and further relief as is just and equitable under the circumstances.

JURY DEMAND

Plaintiff hereby demands a trial by jury as to all issues so triable.

Respectfully submitted,

MURPHY LAW GROUP, LLC

By: /s/ Mary Kramer
Mary Kramer, Esq.
Eight Penn Center, Suite 2000
1628 John F. Kennedy Blvd.
Philadelphia, PA 19103
TEL: 267-273-1054
FAX: 215-525-0210
mkramer@phillyemploymentlawyer.com
Attorney for Plaintiff

Dated: December 22, 2022

DEMAND TO PRESERVE EVIDENCE

The Defendant is hereby demanded to preserve all physical and electronic information pertaining in any way to Plaintiff's employment, to his potential claims and his claims to damages, to any defenses to same, including, but not limited to electronic data storage, employment files, files, memos, job descriptions, text messages, e-mails, spreadsheets, images, cache memory, payroll records, paystubs, time records, timesheets, and any other information and/or data which may be relevant to any claim or defense in this litigation.